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Supreme Court, U.S.
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NO.

IN THE

SUPREME COURT OF THE UNITED STATES

KENNETH A KOZEL,

Petitioner,

v.

ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION OF THE SUPREME COURT OF ILLINOIS,

Respondent.

On Petition for Writ of Certiorari
To The Illinois Supreme Court

APPENDIX, VOLUME 4

KENNETH A. KOZEL
PETITIONER
801 SECOND STREET
LA SALLE, IL 61301
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M.R. 16530

BEFORE THE SUPREME COURT OF ILLINOIS

In re the Matter of:) Filed: March 30, 2000
KENNETH ALAN KOZEL,) Commission No. 96 CH 50
Respondent-Appellant,) No. 1519727

MOTION FOR LEAVE TO FILE A THIRD SUPPLEMENT TO THE PETITION FOR LEAVE TO FILE EXCEPTIONS AND TO SUPPLEMENT THE RECORD

Now comes the respondent by counsel and moves for leave to file the attached Third Supplement to the Petition for Leave to File Exceptions and to supplement the record, and in support thereof, states as follows:

1. After the respondent's petition for leave to file exceptions was filed, it was reported that attorney David I. Grund recently referred to Cook County Circuit Judge Patricia Banks as "a disgrace" and as "an embarrassment", and that her ruling in a case was "certainly influenced by the immense power" of one of the litigants and "didn't involve the facts or the law."

2. A true copy of the article from the March 21, 2000, edition of the Chicago Daily Law Bulletin containing the above excerpt, is atta ched hereto as Exhibit A, pages 1 and 2. The excerpt appears on page 2, and is as follows:

David I. Grund, a Chicago divorce attorney representing Janna Tetzlaff, voiced displeasure with the judge's ruling. "Judge Banks is a disgrace," he said Tuesday. "She's an embarrassment to the good judges that sit in that division and that work hard every day to bring about justice for the litigants." The judge's ruling, Grund contended, "was certainly influenced

by the immense power that the man wields ... but certainly it didn't involvethe facts or the law." (Chicago Daily Law Bulletin, March 21, 2000).

3. Other attorneys have written letters to the editor of the Chicago Daily Law Bulletin expressing their displeasure about Attorney Grund's statements about Judge Banks. True copies of the letters that appeared in the March 24, 2000, edition of the Chicago Daily Law Bulletin are included on Exhibit B, which is attached hereto.

4. Nevertheless, the Administrator has not filed a complaint against Attorney Grund claiming that the above statements violate Supreme Court Rule 8.2(a). Rule 8.2(a) provides that an attorney shall not make a statement he knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge.

5. The failure of the Administrator to file a complaint against Attorney Grund represents a tacit approval that Attorney Grund's statements about Judge Banks are proper and do not violate Rule 8.2(a).

5. On the other hand, the Administrator has alleged that the respondent violated Rule 8.2(a) in various unpublished motions for substitution of judge that were filed in court at the request of the respondent's clients.

6. The statements of Attorney Grund should be made a part of the record in this case because the statements show the wide latitude that is allowed by the Administrator in interpreting Rule 8.2(a) depending on who the attorney is. Attorney Grund is a prominent divorce attorney in Chicago.

7. The respondent has never stated that a judge is "a disgrace" or "an embarrassment", or that a

judge's ruling was based on a litigant's "immense power" rather than "the facts or the law". The respondent has never stated or alleged anything about a judge even remotely close to Attorney Grund's statements. Nevertheless, the Administrator has charged the respondent with violating Rule 8.2(a).

8. If Attorney Grund's statements about Judge Banks are not actionable, then certainly neither are the respondent's.

9. The failure of the Administrator to file a complaint against Attorney Grund and other attorneys who have made similar statements about judges (see pages 12-17 of the Respondent's Petition for Leave to File Exceptions and the Second Supplement to the Petition for Leave to File Exceptions), and the Administrator's prosecution of the respondent in respect of Rule 8.2(a), is inconsistent, and clearly shows that Rule 8.2(a) is unconstitutionally vague, and that the Administrator selectively prosecutes perceived violations of Rule 8.2(a).

10. In addition, this is not Attorney Grund's first confrontation with a judge. A few years ago, Attorney Grund filed a lawsuit against Cook County Associate Judge James Donegan, seeking money damages for tortious interference with contract and prospective economic advantage. The Appellate Court affirmed the dismissal of Attorney Grund's complaint. Grund v. Donegan, 298 Ill. 3d 1034 (1st. Dist. 1998).

11. Some might view suing a judge for money damages as involving a judge's integrity under Rule 8.2(a). The Review Board in this case certainly does because it has cited four cases in which attorneys were disciplined for suing judges for money damages. In re Phelps, 55 Ill. 2d 319 (1973) (two-year suspension); In

re Mason, 33 Ill. 2d 53 (1965) (one-year suspension); In re Standidge, 333 Ill. 361 (1928) (six-month suspension); In re Sarellas, 50 Ill. 2d 87 (1971) (two-year suspension), even though the respondent has not been accused of suing a judge for money damages.

12. In spite of the dismissal by the Appellate Court of Attorney Grund's complaint seeking money damages against a judge, the Administrator has never filed a complaint against Attorney Grund for violating Rule 8.2(a).

13. The Administrator is seeking the ultimate in discipline against the respondent even though the Administrator has never filed a complaint against Attorney Grund for violating Rule 8.2(a) for suing Judge Donegan for money damages and for making the above statements about Judge Banks..

14. The Administrator's inconsistency clearly demonstrates that Rule 8.2(a) is unconstitutionally void for vagueness and overbroad as interpreted by the Administrator, and that the Administrator has selectively prosecuted the respondent.

Wherefore, the respondent prays that this motion for leave to file Third Supplement to the Petition for Leave to File Exceptions and to supplement the record with Exhibits A and B be allowed.

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Respectfully submitted,
S/Peter H. Rodenburg
Counsel for the Respondent

Chicago Daily Law Bulletin
March 21, 2000, Tuesday
Ruling in long-running divorce of lawyer couple criticized

MARTHA NEIL; Law Bulletin staff writer

A hard-fought divorce involving a prominent Chicago attorney has come to a conclusion, following an unheard-of 100-day trial. In a 223-page opinion that contained almost 200 pages of factual findings, Cook County Circuit Judge Patricia Banks on Monday granted the divorce, divided the couple's assets and ruled that Theodore R. Tetzlaff would get custody of the couple's three children.

A leading rainmaker at Jenner & Block, Tetzlaff had been married to Janna Tetzlaff for almost 20 years. She also is an attorney, but left her practice at Winston & Strawn after marrying. The 100-day trial is the longest anyone can remember in any divorce case here, lawyers for all sides agreed, and courthouse observers marveled at both its length and the legal fees that presumably were incurred, given the number of attorneys involved. I understand that the fees were well over $ 1 million," said Bernard B. Rinella, a Chicago divorce attorney who is a past president of the Illinois Chapter of the American Academy of Matrimonial Lawyers. And the estate is not a large estate, so it certainly was contentious way beyond the value of the case." That the divorce case didn't involve extraordinary issues, yet consumed 100 days in trial and resulted in the judge spending many months" to write an opinion, is very disturbing," Rinella said, adding that some of his clients, as well as other Cook County residents, were deprived of their fair share of the time of this judge."

Appeals in the case are expected, and lawyers for Janna Tetzlaff and the couple's children criticized the ruling Tuesday, while Theodore Tetzlaff's lawyers filed an emergency motion for a protective order sealing the opinion. I just was absolutely flabbergasted," said Jerome S. Levin, a well-known Skokie matrimonial lawyer appointed by a previous judge in the case to represent the Tetzlaff children. Banks' ruling on custody was just a complete reversal of what I thought would be the outcome," said Levin, a past president of the Illinois Chapter of the American Academy of Matrimonial Lawyers. Both he and a court-appointed psychologist had recommended that custody of the children be granted to Janna Tetzlaff, Levin said. Although part of the emphasis in the divorce proceedings had been a successful effort to try to get the children to relate to their dad and to have a good relationship with him," their mother was the primary caregiver, he said. In the judge's chambers, the children, aged 16, 13 and 12, indicated that they preferred to live with their mother, Levin said.

David L Grund, a Chicago divorce attorney representing Janna Tetzlaff, voiced displeasure with the judge's ruling. Judge Banks is a disgrace," he said Tuesday. She's an embarrassment to the good judges that sit in that division and that work hard every day to bring about justice for the litigants." The judge's ruling, Grund contended, was certainly influenced by the immense power that the man wields ... but certainly it didn't involve the facts or thelaw." Janna Tetzlaff got some retirement plans and some cash,

but the bulk -- and I mean the bulk of the estate -- went to him," Grund said.

Both Grund and Levin said they plan to appeal Banks' ruling, Levin on the issue of custody of the children and Grund on other grounds as well. However, attorney Donald S. Schiller, who along with lawyers from Jenner & Block represented Theodore Tetzlaff, said the judge's ruling was appropriate, although it was not what his client wanted in every regard, either.

Referring to a portion of Banks' ruling that criticized Grund for repeated attorney misconduct" during the trial that was deliberate and calculated to delay and frustrate these proceedings," Schiller said Grund's actions both in and out of court accounted for the length of the trial. The judge concluded that the mother was not truthful," Schiller said, leading to the decision on custody. Schiller declined to discuss specific issues in the case, saying that a protective order agreed to by both parties at the outset of the 1997 divorce case preclude him from doing so.

As of early Tuesday afternoon, he had made an emergency motion to seal Banks' opinion, contending that information that is not to be disclosed" under protective order permeates both the Judgment of Dissolution of Marriage and the Memorandum Opinion and Order." The emergency motion is expected to be heard Wednesday.

In re the Marriage of Theodore R. Tetzlaff and Janna D. Tetzlaff, No. 97 D 2127.

BEFORE THE HEARING BOARD OF THE
ILLINOIS ATTORNEY REGISTRATION
AND DISCIPLINARY COMMISSION

In the matter of
KENNETH ALAN KOZEL
No. 1519727
Commission No. 96 CH 50

SECOND AMENDED COMPLAINT

Mary Robinson, Administrator of the Attorney Registration and Disciplinary Commission by her attorney, Millicent Willis, pursuant to Supreme Court Rule 753(b), complains of Respondent, Kenneth Alan Kozel, who was licensed to practice law in the State of Illinois on May 20, 1975, and alleges that Respondent has engaged in the following conduct which tends to defeat the administration of justice or to bring the courts or the legal profession into disrepute:

Count I

1. On September 29, 1982, the Administrator of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois (ARDC) filed a complaint against John A. Betts for engaging in alleged attorney misconduct. On October 3, 1985, the Supreme Court of Illinois concluded that Betts had engaged in misconduct and suspended him from the practice of law for six months. A copy of the Court's order and decision in In re John A. Betts, 109 Ill.2d 154 (1985) are attached as Exhibit One.

2. At all times relevant to the events alleged in this complaint, Supreme Court Rule 773 provided in part that an attorney who is the subject of a disciplinary proceeding that results

In the imposition of discipline has a duty to reimburse the ARDC for costs incurred in the investigation, hearing and review of such matters, On June 25, 1991, the Illinois Supreme Court entered an order allowing the Administrator's petition for costs against Betts in the amount of $3,833.06, pursuant to Supreme Court Rule 773, On September 11, 1991 the Supreme Court of Illinois entered an order denying Betts motion to vacate the June 25, 1991 order. Copies of documents referenced in paragraph two are attached as Exhibit Two.

3. As of November 5, 1991, Betts had not paid any part of the $3833.06 judgment entered against him by the Supreme Court of Illinois. On or about November 5, 1991, Betts filed a petition for relief under Chapter 7 of the Bankruptcy Code in the United States District Court for the Northern District of Illinois. Respondent represented Betts in the bankruptcy proceedings. In re John A. Betts, 91 B 21706. A copy of the petition is attached as Exhibit Three.

4. On March 4, 1992, the Administrator sought leave to file a complaint to determine the dischargeability of the debt Betts owed to the ARDC, and mailed to Respondent by overnight mail notice that a hearing concerning the Administrator's request would be conducted on March 6, 1992. The Administrator's complaint was docketed as adversary proceeding number 92 A 00325, ARDC v. Betts A copy of documents referenced in paragraph four are attached as Exhibit Four.

5. On March 6, 1992, neither Respondent nor his client appeared pursuant to the Administrator's notice of March 4, 1992, and, in their absence, Bankruptcy Judge John Squires heard the Administrator's motion

for leave to file the complaint and to determine the dischargeability of Betts' obligation.

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6. On February 24, 1993, Respondent filed a Motion for Supervisory Order before the Illinois Supreme Court, in which Respondent alleged that the Administrator not provided Betts with adequate notice of hearing of the adversarial complaint and that Juleann Hornyak, Clerk of the Illinois Supreme Court, had improperly certified documents which were attached as exhibits to the Adminstrator's pleadings. A copy of Respondent's motion for supervisory order is attached as Exhibit Five.

7. Respondent's motion for supervisory order also alleged that Judge Squires had to know that Betts had not received adequate notice of the hearing, and that the Administrator and Juleann Hornyak, Clerk of the Illinois Supreme Court, had presented false evidence. Respondent. stated that Judge Squires knew that "Robinson and (then, Commission attorney Ruthe M. Howes) Howes had 'cooked the books' as far as notice to Betts. But, John Squires was afraid of Robinson and the power of her office. Betts had to he the sacrificial Iamb and thats what happened." Respondent argued that these errors tainted Judge Squires's conduct and required an investigation by the Illinois Supreme Court. A copy of the motion for supervisory order is attached as exhibit five.

8. Respondent's allegations concerned the judge's qualifications or integrity because they indicated that Judge Squires knowingly admitted false evidence and intentionally permitted the Administrator and Ms. Hornyak to perpetrate a fraud upon the court. Respondent knew or reasonably

should have known that his allegations concerning Judge Squires related to the judge's qualifications or integrity, and that they were false. Respondent's statements regarding the integrity of Judge Squires were knowingly false or made with a reckless disregard as to their truth or falsity.

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9. By reason of the conduct outlined above, Respondent has engaged in the following misconduct:

a. asserting a position on behalf of a client when the lawyer knows or reasonably should know that such action would serve merely to harass or maliciously injure another in violation of Rule 1.2(0(1) of the Illinois Rules of Professional Conduct;

b. making a statement of material fact or law to a tribunal which the lawyer knows or reasonably should know is false, in violation of Rule 3.3(a)(1) of the Illinois Rules of Professional Conduct;

c. making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicative officer, or public legal officer, in violation of Rule 8.2(a) of the Illinois Rules of Professional Conduct;

d. engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct; and

e, engaging in conduct which tends to defeat the administration of justice or bring the courts or the legal profession into disrepute in violation of Supreme Court Rule 771.

COUNT II

10. The Administrator realleges paragraphs 1 through 9 of Count I, above.

11. On August 10, 1993, the Federal Bankruptcy Court issued its final order in ARDC v. Betts, 92 A 00325. The Court decided that Betts' debt to the ARDC was nondischargeable A copy of the documents in this paragraph are attached as Exhibit Six.

12. On August 20, 1993, Respondent filed a notice of appeal before the U.S. District Court in the Northern District of Illinois in ARDC v. Betts. The matter was subsequently briefed by Respondent and the Administrator. A copy of the documents in this paragraph are attached as Exhibit Seven.

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13. On January 24, 1994, Judge Paul E. Plunkett entered a memorandum opinion and order affirming the ruling of the Bankruptcy Court. On February 17, 1994, Respondent filed a motion to alter or amend the memorandum opinion and order. Respondent's memorandum in support of the motion to alter or amend stated in part that: Bankruptcy judges are subject to the ARDC, pander to their every wish and whim and are always going to rule in their favor. After all, the bankruptcy court thinks its like being on the side of angels . . . This attorney remembers a story in the Wall Street Journal where in one Federal District where the District Court Judges would not even take the same elevator as the Bankruptcy Court Judges. That can probably mean anything you want it to mean.

A copy of the documents referred to in this paragraph is attached as Exhibit Eight.

14. Respondent's allegations concerned the judge's qualifications or integrity because they

indicated that Bankruptcy Judge Squires was biased in favor of the ARDC, and that he could not fairly administer justice in the proceedings. Respondent knew or reasonably should have known that his allegation that Bankruptcy Judge Squires was biased in favor of the ARDC related to the judge's qualifications or integrity, and that it was false. Respondent's statements regarding the integrity of Judge Squires was knowingly false or made with a reckless disregard as to its truth or falsity.

15. On March 25, 1994, Respondent filed an additional pleading stating that "Judge Plunkett's an old prosecutor." A copy of the documents referred to in this paragraph is attached as Exhibit Nine.

16. Respondent's allegation concerned the judge's qualifications or integrity because it indicated that Judge Plunkett, because of his former position as a prosecutor, was biased in favor of the ARDC, and that he was not impartial. Respondent's statement suggested that Judge

motion to consolidate, but later consolidated the cases on its own motion. A copy of the documents referred to in this paragraph is attached as Exhibit Thirteen.

22. Oral argument was held on Respondent's appeal on January 18, 1995. Following oral argument, the court affirmed the sanctions against Respondent from the bench.

23. On or about January 18, 1995, Respondent told a reporter from the Chicago Daily Law Bulletin that the court's decision was a 'flip approach" and that he "imagine[d] Judge Coffey decided the case before the oral argument, despite the fact that the judges were attentive and took notes while [Respondent] spoke."

24. Respondent's allegations concerned the qualifications or integrity of the judges because they indicated that Judge Coffey and the rest of the panel were biased in favor of the ARDC and did not give proper consideration to Respondent's arguments. Respondent's statements suggested that the panel of judges was not impartial and could not fairly administer Justice in the proceedings. Respondent knew or reasonably should have known that his statements alleging impropriety by the court were false, Respondent's statements regarding the integrity of Judge Coffey and the other judges on the panel were knowingly false or made with a reckless disregard as to their truth or falsity.

25. By reason of the conduct outlined above, Respondent has engaged in the following misconduct:

a. asserting a position on behalf of a client when the lawyer knows or reasonably should know that such action would serve merely to harass or maliciously injure another in violation of Rule 1.2((1) of the Illinois Rules of Professional Conduct;

b. bringing a proceeding or asserting an issue that is frivolous, in violation of Rule 31 of the Illinois Rules of Professional Conduct;

c. and making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicative officer, public officer, or of a candidate for election or appointment to judicial or legal office, in violation of Rule 8.2(a) of the Illinois Rules of Professional Conduct;

d. engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct; and

e. engaging in conduct which tends to defeat the administration of justice or bring the courts or legal profession into disrepute in violation of Supreme court Rule 771.

COUNT III

26. In 1989, Respondent agreed to represent John A. Maurice in a bankruptcy case, and filed a Chapter 13 case which was later converted to a Chapter 7 case. A copy of the documents referred to in this paragraph is attached as Exhibit Fifteen.

27. Sometime thereafter, John A. Dornik, a creditor who had obtained a judgment against Maurice in 1987, filed a dischargeability complaint against Maurice under Title 11 USC, Secs. 523(a)(2)(A) and 523(a)(6). The Bankruptcy Court later found the debt Maurice owed to Dornik nondischargeable. A copy of the document referred to in this paragraph is attached as Exhibit Fifteen.

28. The District court later affirmed the Bankruptcy Court's decision, and Respondent then appealed to the U.S. Court of Appeals for the Seventh Circuit. Prior to filing the appeal, Respondent had not sought or obtained a stay of the District Court's order, and while the appeal was pending, Dornik sought enforcement of the 1987 judgment in state court. A copy of the documents referred to in this paragraph is attached as Exhibit Sixteen.

29. On November 8, 1993, Respondent filed a second chapter 13 case, In re John A. Maurice 93 B

23478, on behalf of Maurice, thereby staying Dornik's collection efforts. Dornik filed a motion to lift the automatic stay on November 19, 1993. Dornik served both Respondent and Maurice that day with the motion, and notice that the motion would be presented for hearing on November 24, 1993 in Chicago, Illinois. A copy of the documents referred to in this paragraph is attached as Exhibit Seventeen,

30. Respondent filed this action against Dornik for no substantial purpose other than to embarrass, delay, or burden Dornik, and to interfere with Dornik's efforts to enforce his judgment against Maurice.

31. At all times relevant to this complaint, Bankruptcy Rule 3015 (b) stated that: The debtor may file a chapter 13 plan with the petition. If a plan is not filed with the petition, it shall be filed within 15 days thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct. If a case is converted to chapter 13, a plan shall be filed within 15 days thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct.

Respondent knew or should have known that he was required to file a Chapter 13 Bankruptcy plan within the time provided by Bankruptcy Rule 3015(b). A copy of the documents referred to in this paragraph is attached as Exhibit Eighteen.

32. Respondent failed to file a plan within the time provided by Bankruptcy Rule 3015 (b).

33. On November 24, 1993, neither Respondent nor Maurice appeared for the hearing on Dornik's motion. On that date, the Bankruptcy Judge entered an order which lifted the automatic stay, but also

continued the hearing on Dornik's motion until December 17, 1993,

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34. The Bankruptcy Court's November 24, 1993 order granted Respondent leave to file responsive pleadings by December 8, 1993. Respondent knew or should have known of the order shortly after it was entered. A copy of the documents referred to in this paragraph is attached as Exhibit Nineteen

35. On December 17, 1993, Respondent filed a motion to alter or amend the November 24, 1993 order, in which Respondent alleged that he had telephoned the Bankruptcy Court's chambers on November 24, 1993, and been advised that the motion was not on the call that day. Respondent contended that the court lacked jurisdiction because the matter should have been heard in Joliet, Illinois. Respondent also filed a motion to dismiss alleging that Dornik's actions constituted improper harassment, A copy of the documents referred to in this paragraph is attached as Exhibit Twenty.

36. At the hearing on December 17, 1993, Respondent filed a motion to disqualify Judge John H. Squires, contending that Squires was not impartial and treated Respondent and Maurice "differently than he treats other debtors and attorneys who come before him," Respondent further contended that Judge Squires "went along with" Dornik's continued harassment of Maurice. A copy of the documents referred to in this paragraph is attached as Exhibit Twenty-One.

37. Respondent's allegations concerned the judge's qualifications or integrity because they indicated that Bankruptcy Judge Squires was biased

against Respondent and his client, that the judge was involved in a conspiracy or agreement with Dornik related to the alleged harassment of Maurice, and that he could not fairly administer justice in the proceedings. Respondent knew or reasonably should have known that his allegations concerning Judge Squires

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related to the judge's qualifications or integrity, and that they were false. Respondent's statements regarding the integrity of Judge Squires were knowingly false or made with a reckless disregard as to their truth or falsity.

38. On January 12, 1994, the Bankruptcy Court denied Respondent's motion to disqualify Judge Squires- On that same date, the trustee's motion to dismiss the case was granted because Respondent failed to file a plan with the petition as required by Bankruptcy Rule 3015(b). The Bankruptcy Court also determined that Maurice had failed to pay the first installment of the filing fee. A copy of the documents referred to in this paragraph is attached as Exhibit Twenty-Two.

39. The Court found that this case had been filed in bad faith because the motive in filing the case was to obtain the benefits of a stay without having to post a supersedeas bond, The January 12, 1994 order also stated that Respondents actions crossed "the line of what constitutes professional and civil behavior. It undermines the merits of his respective clients' cases," The Court lifted the automatic stay, and sanctioned Respondent and his client. Respondent was ordered to complete continuing legal education in the areas of bankruptcy and legal ethics. The court further advised

that it would report Respondent's conduct to the ARDC and the Executive Committee of the U.S. District Court for the Northern District of Illinois.

40. As of October 18, 1995, the date that Panel D of the Inquiry Board of the Commission voted that a complaint be filed against Respondent in this matter, Respondent had not taken any continuing legal education classes or paid the sanction of $2,282. A copy of the documents referred to in this paragraph is attached as Exhibit Twenty-Three.

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41. On February 11, 1994, Respondent filed motions to alter or amend the judgment of January 12, 1994 as to him and his client. In his motion to alter or amend the judgment as to Maurice, Respondent stated: What is sad about this case, is that Judge Squires is so prejudiced against the debtor and the debtor's attorney, and was so intent on finding bad faith and a reason to dismiss this case with prejudice, that he did not even bother to do the most fundamental thing, check the clerk's records to see if payment of the first $40.00 installment had been made, before he entered his order of January 12, 1994.

Respondent further argued that: The dismissal of the debtor's case with prejudice, is another example of how Judge Squires has lost his objectivity, and of Judge Squires' refusal to treat the debtor and the debtor's attorney like everyone else that appears before him. . . For some reason, Judge Squires does treat Maurice differently than he does Dornik.

A copy of the documents referred to in this paragraph is attached as Exhibit Twenty-Four.

42. Respondent's motion also stated: Judge Squires cites the case of Attorney Registration and Disciplinary Commission v. Betts. The debtor's attorney gets the distinct impression that Judge Squires is going to make the debtor and the debtor's attorney pay dearly for the debtor's attorney's representation of unpopular clients like Betts.

Respondent continued: The debtor is being prejudiced because of Judge Squires' dislike for the debtor's attorney. . . Judge Squires should not penalize the debtor for his obvious dislike of the debtor's attorney, or for the debtor's attorney's representation of an unpopular client in the case of ARDC v. Betts.

A copy of the documents referred to in this paragraph is attached as Exhibit Twenty-Five.

43. Respondent concluded that " If Judge Squires is truly not prejudiced against the debtor as he claims, he should vacate the dismissal with prejudice, and reinstate the case.

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44. In his motion to alter or amend as to the debtor's attorney, Respondent adopted all paragraphs of the motion to alter or amend as to the debtor, and argued further that "Judge Squires should have simply disqualified himself from this case when he was considering an attempt to impose discipline on the debtor's attorney, and should do so now, since he has made himself a witness in any disciplinary proceeding that may arise, out of his entry of the order of January 12, 1994."

45. On March 31, 1994, the court amended the portion of its opinion which found that Maurice failed to pay the first installment of the filing fee, but otherwise affirmed its decision of January 12, 1994. A copy of the documents

referred to in this paragraph is attached as Exhibit Twenty-Six.

46. Respondent's allegations concerned the judge's qualifications or integrity because they indicated that Judge Squires was biased against Respondent and Respondent's client, and that he could not fairly administer justice in the proceedings. Respondent knew or reasonably should have known that the allegations of impropriety by Judge Squires referred to in paragraphs 41, 42, 43 and 44, above, were false. Respondent's statements regarding the integrity of Judge Squires were knowingly false or made with a reckless disregard as to their truth or falsity.

47. By reason of the conduct outlined above, Respondent has engaged in the following misconduct:

a. asserting a position on behalf of a client when the lawyer knows or reasonably should know that such action would serve merely to harass or maliciously injure another in violation of Rule 1.2(0(1) of the Illinois Rules of Professional Conduct;

b. failing to act with reasonable diligence in representing a client, in violation of Rule 1.3 of the Illinois Rules of Professional Conduct;

c. bringing a proceeding or asserting an issue that is frivolous, in violation of Rule 3.1 of the Illinois Rules of Professional Conduct;

d. using means In representing a client that have no substantial purpose other than to embarrass, delay, or burden a third person in violation of Rule 4,4 of the Illinois Rules of Professional Conduct;

d. making a statement the lawyer knows

to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, in violation of Rule 8.2(a) of the Illinois Rules of Professional Conduct;

f. engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a) (5) of the Illinois Rules of Professional Conduct; and

g. engaging in conduct which tends to defeat the administration of justice or bring the courts or the legal profession into disrepute in violation of Supreme Court Rule 771.

COUNT IV

48. In 1984, Respondent agreed to represent Tracy Greenwood, the Administrator of the Estate of John Greenwood, in a wrongful death action against Northern Illinois Gas Company NIGAS in the Circuit Court of the Thirteenth Judicial District, Greenwood v. NIGAS, 84 L 179.

49. On November 23, 1993, the Circuit Court of LaSalle County granted a preliminary injunction in favor of NIGAS. Respondent appealed to the Third District Appellate Court of Illinois on behalf of Greenwood, alleging that the order was improperly entered in Will County, and briefs were filed by both parties. Greenwood v. NIGAS, 3-94-0001, A copy of the documents referred to in this paragraph is attached as Exhibit Twenty-Seven.

50. In April 1994, Respondent filed a motion to strike the appellee's brief, alleging that the brief contained the facsimile signature of F. Kent Ayers, counsel for NIGAS, rather than an original signature. NIGAS maintained that the brief bore an original signature, and that assuming

arguendo that the brief did contain a facsimile signature, it would still comply with Illinois Supreme Court Rule 137. A copy of the documents referred to in this paragraph is attached as Exhibit Twenty-Eight.

51. At all times relevant to this complaint, Rule 137 provided in part that "If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or moving. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the party or panics the amount of reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney fee."

52. On April 21, 1994, the Appellate Court for the Third District denied Respondent's motion to strike. On June 15, 1994, Respondent then filed a motion for supervisory order before the Supreme Court of Illinois asking that NIGAS' brief be stricken because it was not signed. Greenwood v, NIGAS, No. 77395. A copy of the documents referred to in this paragraph is attached as Exhibit Twenty-Nine.

53. NIGAS responded to the motion for supervisory order on June 21, 1994. NIGAS contended that the question of whether the signature complied with Rule 137 had been addressed twice before on a prior appeal of the same case. NIGAS requested that Respondent be sanctioned for filing a spurious motion. A copy of the documents referred to in this paragraph is attached as Exhibit Thirty.

54. On June 22, 1994, the Supreme Court of Illinois denied the motion for supervisory order. On July 19, 1994, the Court sanctioned Respondent, and ordered him to pay attorneys fees and other expenses incurred by NIGAS in defending against the motion for supervisory order. A copy of the documents referred to in this paragraph is attached as Exhibit Thirty-One.

55. Respondent's purpose in filing the motion for supervisory order was merely to harass or maliciously injure Ayers.

56. Respondent's actions were frivolous because the issue of whether the facsimile signature on the NIGAS brief complied with Rule 137 had already been resolved in a prior appeal. Moreover, at all times relevant to this complaint, Rule 137 provided that the remedy for a signing in violation of the Rule is the imposition of a sanction and not the remedy that Respondent requested, striking the brief,

57. By reason of the conduct outlined above, Respondent has engaged in the following misconduct:

a. asserting a position on behalf of a client when the lawyer knows or reasonably should know that such action would serve merely to harass or maliciously injure another in violation of Rule 1.2(0(1) of the Illinois Rules of professional Conduct;

b. bringing a proceeding or asserting an issue that is frivolous, in violation of Rule 3.1 of the Illinois Rules of Professional Conduct;

b. using means to represent a client that have no substantial purpose other than to embarrass, delay, or burden a third person in

violation of Rule 4.4 of the Illinois Rules of Professional Conduct; and

d. engaging in conduct that is prejudicial to the administration of justice, In violation of Rule 8.4(a)(5) of the Illinois Rules of professional Conduct.

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COUNT V

58. On June 18, 1991, Respondent and attorney Kevin Kelly filed their appearances in the Circuit Court of LaSalle County on behalf of Donna Fegley in Fegley v. Johnson, 90 F 198, A copy of the documents referred to in this paragraph is attached as Exhibit Thirty-Two.

59. On June 24, 1991, Kelly filed a verified petition for change of venue, alleging that Judge H. Chris Ryan was prejudiced against him, The petition was granted on June 26, 1991, and the case was reassigned to Judge Cynthia M. Raccuglia. A copy of the documents referred to in this paragraph is attached as Exhibit Thirty-Three.

60. On November 5, 1991, Respondent filed a motion for continuance and a motion to disqualify Judge Raccuglia, alleging that she was prejudiced in favor of his opponents. Respondent charged that Judge Raccuglia had become "an advocate" on behalf of opposing counsel, had advanced the date of the pretrial, and was unwilling to stay proceedings in the trial process in order to afford his client the opportunity to utilize the appellate process. Judge Raccuglia denied both motions on November 15, 1991, A copy of the documents referred to in this paragraph is attached as Exhibit Thirty-Four,

61. Respondent's allegations concerned the judge's qualifications or integrity because they

indicated that Judge Raccuglia was biased in favor of Respondent's opponents, that she was assisting opposing counsel in his arguments, and that she could not fairly administer justice in the proceedings. Respondent's statements that Judge Raccuglia was prejudiced in favor of his opponents were false. Respondent knew or reasonably should have known that the allegation of Impropriety by Judge Raccuglia was false. Respondent's statements regarding the integrity of Judge Raccuglia were knowingly false or made with a reckless disregard as to their truth or falsity.

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62. On February 24, 1992, Respondent filed a memorandum in support of his November 5, 1991 motion to disqualify. Respondent stated that Judge Raccuglia's father had a referral agreement with counsel for Johnson. He also produced a 1988 letter that Judge Raccuglia had written to Respondent while she was a practicing attorney. In the letter, Judge Raccuglia asked for clarification of an issue, and mentioned the possibility of filing a Section 2-611 motion against Respondent for pleading untrue allegations without reasonable cause. A copy of the documents referred to in this paragraph is attached as Exhibit Thirty-Five.

63. Judge Raccuglia recused herself based on the motion, and the case was reassigned to Judge Robert H. Adcock. On October 7, 1993, Judge Adcock recused himself. A copy of the documents referred to in this paragraph is attached as Exhibit Thirty-Six.

64. On October 12, 1993, Judge Howard Wampler was assigned to the case. On October 18, 1993, Judge Wampler recused himself, and the case

was reassigned to Judge Charles E. Marshall. Respondent filed a motion to quash service of process. A copy of the documents referred to in this paragraph is attached as Exhibit Thirty-Five

65. On November 23, 1993, Judge Marshall denied Respondent's motion to quash, and ruled that proper service had been made on Respondent's client, Donna Fegley. On that same day, Respondent filed a motion to substitute judges as a matter of right. Judge Marshall denied Respondent's motion, A copy of the documents referred to in this paragraph is attached as Exhibit Thirty-Eight.

66. Respondent also filed that day, a petition for substitution of judges for cause, alleging that opposing counsel had participated in a case referral agreement with Judge Marshall for several years. Judge James Lanuti conducted a hearing on this petition instanter. Judge Lanuti

determined that Respondent's allegations were "untrue and made without any basis in fact or law," and denied Respondent's motion. A copy of the documents referred to in this paragraph is attached as Exhibit Thirty-Nine.

67. Respondent's allegations concerned the judge's qualifications or integrity because they indicated that Judge Marshall was biased in favor of Respondent's opponents, that he maintained a relationship with opposing counsel which undermined his impartiality and that he could not fairly administer justice in the proceedings. Respondent's statements which indicated a lack of integrity by Judge Marshall were false.

68. Respondent's statements regarding the integrity of Judges Raccuglia and. Marshall were knowingly false or made with a reckless disregard as to their truth or falsity.

69. Respondent's repeated motions and petitions to disqualify judges were filed merely to harass or maliciously injure the judges against whom they were filed, and Respondent had no basis for doing so that was not frivolous.

70. By reason of the conduct outlined above, Respondent has engaged in the following misconduct

a. asserting a position on behalf of a client that serves merely to harass or maliciously injure another, in violation of Rule 1.2(0(1) of the Illinois Rules of Professional Conduct;

b. making a statement of material fact or law to a tribunal which the lawyer knows or reasonably should know is false, in violation of Rule 3.3(a)(1) of the Illinois Rules of Professional Conduct;

c. making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicative officer, or public legal officer, in violation of Rule 8.2(a) of the Illinois Rules of Professional Conduct; and

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d. engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct.

COUNT VI

71. On January 7, 1994, Respondent represented Tracy Greenwood, successor administrator of the estate

of John Gilbert Greenwood in the consolidated cases of Estate of Greenwood, 84 P 62, and Greenwood v. NIGAS, 84 L 179, in the Circuit Court of LaSalle County.

72. Between November 19, 1990, and January 7, 1994, two judges recused themselves in both matters, and two motions for change of venue filed by Respondent had been granted.

73. On January 7, 1994, Respondent filed a motion to substitute judges for cause in case numbers \$4 P 62 and 84 L 179, in which Respondent alleged that Judge Stephen D. White's decisions were racially motivated Respondent stated therein that "On December 10, 1993, and at the request of NIGAS, Judge White directed that TRACEY GREENWOOD appear before him on January 7, 1994, for no specific purpose, other than to be asked whether she can read, and whether she can add two and two, things that he would never ask a white person." (emphasis in original) Respondent also alleged that Judge White favored the Northern Illinois Gas Company (NIGAS) because of a personal and business relationship with the company. A copy of the documents referred to in this paragraph is attached as Exhibit Forty.

74. On January 7, 1994, Judge William R. Banich conducted a hearing on the motion to substituted Judge White for cause, found no evidence to support the allegations, and denied the motion. Respondent then filed a motion to substitute judges as a matter of right. A copy of the documents referred to in this paragraph is attached as Exhibit Forty-One.

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75. Respondent's allegations concerned the judge's qualifications or integrity because they

indicated that Judge White was biased against Respondent's client on the basis of race in violation of all applicable legal and constitutional provisions, the judge asked Ms. Greenwood racially motivated and embarrassing questions, and that he could not fairly administer justice in any proceedings involving racial minorities, Respondent knew or should have known that the allegations of impropriety by Judge White were false. Respondent's statements regarding the integrity of Judge White were knowingly false or made with a reckless disregard as to their truth or falsity. Respondent's motion to disqualify was filed merely to harass or maliciously injure Judge White,

76. By reason of the conduct outlined above, Respondent has engaged in the following misconduct:

a. asserting a position on behalf of a client that serves merely to harass or maliciously injure another, in violation of Rule 1.2(0(1) of the Illinois Rules of Professional Conduct;

b. making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicative officer, or public legal officer, in violation of Rule 8.2(a) of the Illinois Rules of Professional Conduct; and

c. engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct.

COUNT VII

77. In 1993, Respondent represented Martin L. Gibbs in People v. Gibbs, 93 CF 69, 93 CM 401, 93 TR 2346, 93 TR 2347, and 93 TR 2348 in the Circuit Court of Bureau County.

78. On October 19, 1993, following two motions for change of judges, Chief Robert Carter reassigned these matters to Judge Charles E. Marshall.

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79. On October 26, 1993, Respondent filed a motion to vacate the order of assignment, basing his argument on the claim that the assignment had not been made pursuant to the usual rotation system." Judge Carter denied Respondent's motion on October 27, 1993. In his October 27, 1993 order denying Respondent's motion, Judge Carter held that "the MOTION TO VACATE ORDER OF ASSIGNMENT are (sic) frivolous, patently without merit, and an Improper attempt to interfere with the assignment authority of the Chief Judge." A copy of the documents referred to in this paragraph is attached as Exhibit forty-two.

80. On October 29, 1993, Respondent filed a motion to reconsider, alleging that Judge Carter treated Gibbs "differently from all other parties. . . and denies the defendant due process and equal protection of the law, in violation of the state and federal constitutions." Respondent further alleged that the language used by Judge Carter in denying the October 26, 1993 motion was "unduly harsh and uncivil." Respondent also stated that Judge Carter was prejudiced against him. A copy of the documents referred to in this paragraph is attached as Exhibit Forty-Three.

81. On November 2, 1993, Judge Carter denied the motion to reconsider. A copy of the documents referred to in this paragraph is attached as Exhibit Pony-Four.

82. Respondent's allegations concerned the judge's qualifications or integrity because they

indicated that Judge Carter was biased against Respondent and Respondent's client, that the judge intentionally violated the state and federal constitutions, and that he could not fairly administer justice in the proceedings. Respondent knew or should have known that the allegations of impropriety by Judge Carter were untrue, Respondent's statements regarding the

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integrity of Judge Carter were knowingly false or made with a reckless disregard as to their truth or falsity. Respondent s motion was filed merely to harass or maliciously injure Judge Carter.

83. By reason of the conduct outlined above, Respondent has engaged in the following misconduct:

a. asserting a position on behalf of a client that serves merely to harass or maliciously injure another, in violation of Rule 1.2(0(1) of the Illinois Rules of professional Conduct;

b. making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicative officer, or public legal officer, in violation of Rule 8.2(a) of the Illinois Rules of Professional Conduct; and

c. engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct.

COUNT VIII

84. On August 15, 1991, Respondent filed a special and limited appearance in Estate of Glen Serby, 89 P 343, in the Circuit Court of LaSalle County. referred to in this paragraph is attached as Exhibit Forty-Five.

85. On March 2,1992, Judge James A. Lanuti ordered that a citation be issued directing John Betts to appear in court in 89 p 343 to show cause why Betts should not turn over assets belonging to the Serby estate. A copy of the documents referred to in this paragraph is attached as Exhibit Forty-Six.

86. On May 18, 1992, Respondent petitioned for a change of venue as a matter of right. Judge Lanuti granted the motion. A copy of the documents referred to in this paragraph is attached as Exhibits Forty-Seven and Sixty-One.

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87. The case was reassigned to Judge Cynthia M. Raccuglia on June 4, 1992. On April 6, 1993, Judge Raccuglia recused herself sua sponte The case was reassigned to Judge Stephen White. A copy of the documents referred to in this paragraph is attached as Exhibit Forty-Eight.

88. On August 12, 1994, Respondent's motion to quash service on the citation was denied. Respondent then filed a motion to change judges for cause, alleging that Judge White was biased because Respondent had accused White of making racial slurs in another case. Chief Judge Carter assigned Judge William Banich to hear the motion to change judges. A copy of the documents referred to in this paragraph is attached as Exhibit Forty-Nine.

89. On the same day, Respondent petitioned to change judges for cause, alleging that Banich also was biased because Banich had previously denied a petition for change of judges for cause in another matter involving Judge White. A copy of the documents referred to in this paragraph is attached as Exhibit Fifty.

90. Chief Judge Carter assigned Judge Cynthia Raccuglia to decide the motion to disqualify Judge Banich. Respondent then filed a motion to disqualify Judge Raccuglia, arguing that she had previously recused herself in the same case. A copy of the documents referred to in this paragraph is attached as Exhibit Fifty-One.

91. Chief Judge Carter assigned Judge Howard C. Ryan, Jr. to bear the motion to disqualify Judge Raccuglia. A copy of the documents referred to in this paragraph is attached as Exhibit Fifty-Two.

92. On August 15, 1994, Respondent sent a facsimile to Chief Judge Carter with what Respondent referred to as "suggestions" about procedures for addressing motions to change judges. Respondent alleged therein that Judge Carter was attempting "to manipulate the outcome

of cases by use of the assignment power he claims to have because of his office." A copy of the documents referred to in this paragraph is attached as Exhibit Fifty-Three.

93. On August 19, 1994, Respondent filed a motion to disqualify Judge Ryan, arguing that Judge Lanuti had tainted Judge Ryan and other members of the "judicial pool' by speaking with them about John Betts. A copy of the documents referred to in this paragraph is attached as Exhibit Fifty-Four.

94. On August 19,1994, Judge Garter assigned Judge Paul Root to hear the motions against Judges White, Banich, Raccuglia, and Ryan. A copy of the documents referred to in this paragraph is attached as Exhibit Fifty-Five.

95. On August 26, 1994, Respondent petitioned to change judges for cause, alleging that Judge Root could not be impartial. At 9:58 a.m., on that same day, Respondent sent a facsimile to Judge Root, informing the judge that Respondent would be late appearing in the case because of a conflicting court appearance in Chicago. Respondent also instructed the judge not to enter a default judgment against him. A copy of the documents referred to in this paragraph is attached as Exhibit Fifty-Six.

96. Respondent's allegations concerned the judges' qualifications or integrity because they indicated that Judges Raccuglia, Banich, White, Ryan and Carter were biased against Respondent, and that none of them could fairly administer justice in the proceedings. Respondent's allegations also concerned the Judge Carter's qualifications or integrity because they indicated that Judge Carter was attempting to influence the decisions in cases by assigning them to a specific judge. Respondent knew or should have known that the allegations of impropriety he made against Judges Raccuglia, Banich, White. Ryan and Carter were false. Respondent's

statements regarding the integrity of these judges were knowingly false or made with a reckless disregard as to their truth or falsity. Respondent's motions were filed merely to harass or maliciously injure the judges against whom they were filed.

97. By reason of the conduct outlined, Respondent has engaged in the following misconduct:

a. asserting a position on behalf of a

client that serves merely to harass or maliciously injure another, in violation of Rule 1.2(0(1) of the Illinois Rules of Professional Conduct;

b. making a statement of material fact or law to a tribunal which the lawyer knows or reasonably should know is false, in violation of Rule 3.3(a)(1) of the Illinois Rules of Professional Conduct;

c. making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicative officer, or public legal officer, in violation of Rule 8.2(a) of the Illinois Rules of Professional Conduct; and

d. engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct.

COUNT IX

98. On May 26, 1994, Respondent wrote to Ray Breen, who was then Executive Director of the Judicial Inquiry Board, regarding the Chief Judge of the Thirteenth Judicial Circuit, Robert L. Carter.

99. In his correspondence to Breen, Respondent alleged that Judge Carter "won't make the circuit clerk follow Illinois Law." Respondent stated that Judge Carter and the clerk, David Carry were engaged in a political conspiracy:

David Carey's bond fails to comply with Illinois law. . . While you have to understand that I don't know for sure, but I think these issues are being

avoided because both Carter and Carey are Democrats. After all, if party unity doesn't mean something, then what does?

100. Respondent knew or should have known that his accusations against Judge Carter were false because he had no evidence to support his position that the judge allowed Carey to violate the law because of party unity.

101. Respondent's allegations concerned the judge's qualifications or integrity because they indicated that Judge Carter condoned the alleged illegal actions of Mr. Carey. Respondent's statements regarding the integrity of Judge Carter were knowingly false or made with a reckless disregard as to their truth or falsity. Respondent's letter was sent to Mr. Breen merely to harass or maliciously injure Judge Carter.

102. By reason of the conduct outlined above, Respondent has engaged in the following misconduct:

a. making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicative officer, or public legal officer, in violation of Rule 8.2 (a) of the Illinois Rules of Professional Conduct;

b. engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct; and

c. engaging in conduct which tends to defeat the administration of justice or bring the courts or the legal profession into disrepute in violation of Supreme Court Rule 771,

COUNT X

103. By letter dated December 15, 1993, Respondent complained to Ray Breen that Judge

Stephen D. White had made "racial slurs" against his client, He also complained that Judge White had prohibited his client from collecting on her judgment.

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104. Respondent knew or should have known that the allegations against Judge White were false because Judge White did not use any derogatory or disparaging words against Respondent's client, and because the judge had entered a preliminary injunction against Respondent's client to prevent her from collecting a judgment against NIGAS pending a final decision by the appellate court on the amount NIGAS was required to pay.

105. Respondent's allegations concerned the judge's qualifications or integrity because they indicated that Judge White was biased against Respondent's client on the basis of race , that the judge had improperly interfered with the enforcement of a judgment against NIGAS, and that he could not fairly administer justice in any proceedings involving racial minorities. Respondent's statements regarding the integrity of Judge White were knowingly false or made with a reckless disregard as to their truth or falsity, Respondent's letter was sent to Mr. Breen merely to harass or maliciously injure Judge White.

106. By reason of the conduct outlined above, Respondent has engaged in the following misconduct

a. making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicative officer, or public legal officer, in violation of Rule 8.2(a) of the Illinois Rules of Professional Conduct;

b. engaging in conduct that is prejudicial

to the administration of justice, in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct; and

c. engaging in conduct which tends to defeat the administration of justice or bring the courts or the legal profession into disrepute in violation of Supreme Court Rule 771.

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COUNT XI

107. On March 8, 1994, Respondent wrote to Dan Meuller, in the Administrative Office of the Illinois Supreme Court. Respondent alleged that David Carey, Clerk of the Circuit Court of LaSalle County, had improperly destroyed an active file in the case of Befts v. Meteille, 88 SC 2538. A copy of the documents referred to in this paragraph is attached as Exhibit Fifty-Seven.

108. On April 4, 1994, Respondent wrote to Jim Baker, Vice-President of Western Surety Company, the company which provided the Circuit Court Clerk's surety bond. He stated that "The Chief Judge, fellow democrat (sic) of Carey, wants to just ignore the matters. That's been forwarded on to the Illinois Judicial Inquiry Board for them to sort out." A copy of the documents referred to in this paragraph is attached as Exhibit Fifty-Eight.

109. Respondent's allegations concerned the judge's qualifications or integrity because they indicated that Judge Carter failed to act appropriately because of his political affiliation. Respondent knew or should have known that the allegations of impropriety against Judge Carter were false. Respondent's statements regarding the integrity of these judges were

knowingly false or made with a reckless disregard as to their truth or falsity.

110. By reason of the conduct outlined above, Respondent has engaged in the following misconduct:

a. making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicative officer, or public legal officer, in violation of Rule 8.2(a) of the Illinois Rules of Professional Conduct;

b. engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct; and

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c. engaging in conduct which tends to defeat the administration of justice or bring the courts or the legal profession into disrepute in violation of Supreme Court Rule 771.

COUNT XII

111. As of May 12, 1988, Respondent had not been admitted to practice in the U. S. District Court for the Central District of Illinois.

112. On May 12, 1988, Respondent appeared before the U, S. District Court for the Central District of Illinois.

113. In 1988, Local Rule 1(E) of the United States District Court for the Central District of Illinois provided that '[a]ny person who, before his or her admission to the bar of this Court ... exercises in this District any of the privileges of a member of said bar in any action or proceeding pending in this Court, or who pretends to he entitled to do so, may be adjudged guilty of contempt of court." A copy of the documents

referred to in this paragraph is attached as Exhibit Fifty-Nine.

114. Respondent's appearance on May 12, 1988 violated the regulation of the legal profession in the U. 5, District Court for the Central District of Illinois.

115. By reason of the conduct outlined above, Respondent has engaged in the following misconduct:

a. practicing law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; and

b. engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct.

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COUNT XIII

116. On or about October 17, 1991, Johanna R. Yeager was injured during the course of her employment with Today Cartage, Inc. while using a pressure washer.

117. On or about October 26, 1991, Respondent and then-attorney John A. iBetts, agreed to represent Ms. Yeager before the Illinois Industrial Commission in matters relating to the October 17, 1991 incident.

118. On or about November 4, 1991, Respondent and Betts, on behalf of Ms. Yeager, filed an Application for Adjustment of Claims before the Illinois Industrial Commission. The Secretary of the Commission docketed the matter as Johanna Yeager v. Today Cartage, Inc., number 91 WC 57188.

119. Between November 4, 1991 and January 12, 1995, Respondent took no action to pursue case number 91 WC 57188.

120. On January 12, 1995, the Industrial Commission issued an order dismissing case number 91 WC 57188 for want of prosecution. The Industrial Commission notified Respondent of the dismissal on or about March 3, 1995, and Respondent knew or should have known of the dismissal shortly thereafter.

121. In 1995, Respondent knew that Betts had been disbarred on September 27, 1993, and that Betts could no longer represent Yeager in matters relating to case number 91 WC 57188. A copy of the documents referred to in this paragraph is attached as Exhibit Sixty.

122. Respondent did not advise Ms. Yeager that case number 91 WC 57188 had been dismissed or take action to reinstate the case.

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123. Between November 4, 1991, and March 31, 1995, Ms. Yeager telephoned Respondent between 20 and 30 times to inquire about the status of her case. Respondent returned only three telephone calls to Ms. Yeager during that time.

124. In late 1994 or early 1995, Respondent telephoned Ms. Yeager and left a message on her answering machine. Respondent's message to Yeager was that he had received a demand letter from the defendant and that every-thing was "going fine."

125. Respondent telephoned Ms. Yeager on or about March 31, 1995, but Ms. Yeager was not at home. Respondent left a message for Ms. Yeager with her son stating that "everything was settled."

126. Respondent's statements concerning the status of case number 91 WC 57108, referred to in paragraphs 125 and 126, above, were false at the time

that he made them because case number 91 WC 75188 had been dismissed.

127. On or about March 31, 1995, Ms. Yeager discovered that case number 91 WC 57188 had been dismissed and hired a new attorney to represent her in that matter.

128. By reason of the conduct outlined above, Respondent has engaged in the following misconduct:

a. failing to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3 of the Illinois Rules of professional Conduct;

b. failing to keep a client reasonably informed about the status of a matter in violation of Rule 1.4 of the Illinois Rules of Professional Conduct;

c. failing to make reasonable efforts to expedite litigation consistent with the interests of the client in violation of Rule 3.2 of the Illinois Rules of Professional Conduct;

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d. engaging in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(a)(4) of the Illinois Rules of Professional Conduct;

e. engaging in conduct that is prejudicial to the administration of justice in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct; and

f. engaging in conduct which tends to defeat the administration of justice or bring the courts or the legal profession into disrepute in violation of Supreme Court Rule 771.

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WHEREFORE, the Administrator requests that this matter be assigned to a panel of the Hearing Board,

that a hearing be held, and that the panel make findings of fact, conclusions of fact and law, and a recommendation for such discipline as is warranted.

Respectfully Submitted,
Mary Robinson, Administrator
Attorney Registration and
Disciplinary Commission
By: Millicent Willis /s/

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Legal shortcuts run into some dead ends

By: William Glaberson

The New York Times

To cope with a flood of cases, appeals judges across the country are increasingly talking shortcuts that critics say undermine the fairness of the justice system, including issuing decisions that don't count as precedent and deciding thousands of appeals with one-word rulings, like "Affirmed."

Judges defended the shortcuts as essential to keep the courts functioning because litigious Americans were filing more and more suits. The critics of the fast-track techniques were long cast as disgruntled gadflies.

But for the first time, the critics' arguments are finding their way into mainstream legal thinking. The most important sign of change was a startling federal appeals court ruling in August that said federal courts violated their constitutional power with the no-precedent ruling, giving the critics their biggest victory ever. The decision, by a three-judge panel of the Sth U.S. Circuit Court of Appeals in St. Louis, has some legal experts saying a review of appeals procedures nationally now seems necessary.

"I think we've reached a point where everybody's going to ask, 'Has this gone too far?'" said Arthur D. Hellman, an expert on appeals courts at the University of Pittsburgh School of Law.

The three-judge panel, deciding a tax case, agreed with one of the critics main assertions: that the courts ordered far too many of their decisions not be published in official law books. By most courts' definition, such rulings cannot be used as precedent for other cases, which the critics say encourages

inconsistent rulings that sometimes seem based on whim or bias.

Judges say unpublished opinions can be more succinct than full published rulings and can be issued without worrying about prior cases or the effect on future law. Of almost 25,000 federal appeals rulings last year, over 17,000 went unpublished, according to government reports. In some state courts the proportion of unpublished rulings has climbed to more than 90 percent. The result, say the critics, is a vast underground body of law.

The panel in St. Louis agreed. "The judicial power to determine law is a power only to determine what the law is, not to invent it," said the opinion by Circuit judge Richard S. Arnold, an influential judge who was considered for the Supreme Court in the early years of the Clinton administration. The ruling came after a number of other signs that the critics of judicial shortcuts were making progress.

In February, the American Bar Association took aim at the one-word opinions. A bar association resolution called on all appeals courts to provide "at a minimum reasoned explanations for their decisions."

Last year, the federal appeals court in Philadelphia changed its policy and decided to limit its use of one-word decisions. In addition, several other federal appeals courts have recently changed their rules to allow lawyers to refer to unpublished rulings, even though those rulings are not binding as precedent.

The California legislature considered, but did not pass, a bill last spring that would have required that all state appeal opinions be publicly available and valid as precedents. But that there were legislative

hearings on the bill showed more responsiveness to the issue than there had been in the past, as California brothers Kenneth and Michael Schmier could attest.

After they lost a real estate case in the 1980s, the Schmiers turned attacks on court shortcuts into a vocation. They sued the California Supreme Court over the issue, lost, and are now asking the U.S. Supreme Court to review their case.

Michael Schmier ran for California attorney general and U.S. senator in recent years on the single-issue platform of ending the shortcuts. He failed, and both brothers have grown accustomed to seeing their battle described as eccentric. "I suppose the idea that you can stand up and try to force the judiciary of America to change is nuts," Kenneth Schmier said in an interview last week.

That may be changing. Like the California legislators who sponsored the bill considered last spring, the three federal judges in St. Louis said the appeals shortcuts raised fundamental questions. The nations founders, the decision said, intended federal judges' decisions to become precedent, with each case setting the foundation for later law.

As a result, Arnold wrote, the panel had to follow the reasoning of one of the court's earlier decisions even though that decision was unpublished. Circuit Judge Gerald W. Heaney and U.S. District Judge Paul A. Magnuson agreed.

Legal experts say the panel's ruling can be reversed by the full 10-member Court of Appeals and may reach the U.S. Supreme Court. But "whatever happens to that case, this issue won't go away and will

only get larger," said Stephen R. Barnett, a law professor at the University of California at Berkeley.

The decision applies only to federal courts, but lawyers say similar claims are certain to be made in state appeals courts.

Judges who criticized the ruling said the courts would grind to a halt if every case were treated as a precedent. Alex Kozinski, a judge on the federal appeals court in San Francisco, said making every case count as precedent would force judges into unnecessary writing on routine matters. "It is a fallacy," Kozinski said, "to think having more out there is better. More garbage is not better."
(Source: Chicago Daily Law Bulletin, 10-11-00)

Respondent's Exhibit 4-1
News Tribune March 1, 1995
High court gives reasons for Baby Richard decision

Chicago (AP) - The Illinois Supreme Court ordered Baby Richard returned to his biological father based on invented facts, an attorney for the adoptive parents says.

Attorney Jerold Solovy accused the justices of basing their decision on information that was "made up out of thin air." He said the justices "were mad at my clients."

Respondent's Exhibit 4-2
Chicago Daily Law Bulletin January 25, 1995
High court gives custody of "Baby Richard" to biological father
Springfield - ...

The attorney for the adoptive parents, Jerold Solovy, said he would ask the court to recall its mandate to allow the couple known in court documents as John and Jane Doe to file a petition for certiorari with the U.S. Supreme Court.

"I'm astounded by the swiftness of the decision and by the decision itself," Solovy said: "It's contrary to all Illinois precedent and to all notions of a civilized society."

Respondent's Exhibit 4-3
Chicago Tribune January 26, 1995
Baby Richard

...

Patrick Murphy, who represents the legal interests of the boy, said Jane Doe was "hysterical" and "wanted to leave the state."

"These justices are out of control," Murphy said at a news conference in his Chicago office. "This is a scene that I could not envision in my worst nightmares. This is probably the greatest proof in the world of the foolhardiness of an elected judiciary."

Respondent's Exhibit 4-13
Chicago Lawyer April 1995

... then-CBA president Thomas A. Demetrio, a personal injury lawyer, said from the podium"

"I don't mind it too much when the plaintiffs' personal injury trial lawyers are lambasted by the president of the United States, the vice-president of the United States, or by the so-called tort reformers. But I believe it to be unbecoming for a member of the judiciary to gratuitously exhibit his bias against plaintiff's personal injury trial lawyers in a published opinion."

Heiple stood up from the head table and walked out of the room. He returned later and took a seat in the audience...

Respondent's Exhibit 4-15
Chicago Lawyer April 1995

...

Heiple's opinions "just don't seem to be logical," Rotunda said. His style is very petulant. One can disagree with an appellate judge without attacking him personally. If an attorney wrote in his brief the same language that the judge wrote in the (Baby Richard) opinion, a lot of judges would criticize the attorney.

"... in the Baby Richard case he attacked Judge Rizzi, the Governor, the Legislature..."

Respondent's Exhibit 4-16
Court urged to reverse 'costly' pension ruling
Chicago Daily Law Bulletin October 14, 1996

...

In a petition for leave to appeal filed Friday by attorney M. Christine Heins of Murphysboro, the trustees contend that the appeals court's September 24 ruling would deplete pension funds throughout the state...

"This is a rogue decision, in conflict with all previous law in the state addressing the same issue, and merits the grant of a petition for leave to appeal," the board's argument concludes...

Respondent's Exhibit 4-18
Chicago Sun-Times February 25, 1996
Critics Label Panel An Embarrassment

Power and mystery surround the seven justices of the Illinois Supreme Court. They live a cloistered life style in apartments at taxpayer expense.

...

"Pretty actresses who can't act," said Daniel Polsby, a law professor at Northwestern University. "Certainly I can't say these Bozos are incompetent, but then you read the Baby Richard case," he said, referring to the 1994 ruling overturning the adoption of the boy and returning him to his natural father.

...

Respondent's Group Exhibit 22, pp. 3-4
Chicago Daily Law Bulletin February 14, 1996

Justice James D. Heiple's recent statement regarding his encounter with the Pekin Police Department is a discredit to the Supreme Court. Like any other defendant or potential defendant, Justice Heiple has the right to assert his innocence and is entitled to the full panoply of constitutional and statutory protections. But Justice Heiple's statement - issued, we understand on official Supreme Court stationery through the court's official spokesperson - raises serious questions about his ability to be fair in criminal cases coming before the court.

...

C. Steven Tomashefsky
President: Chicago Council of Lawyers

...

Respondent's Exhibit 39
Reviewing standards of appellate review
Chicago Daily Law Bulletin September 13, 1996
By Attorney Timothy P. O'Neill

In its 1995 term, the U.S. Supreme Court continued its performance of The Incredible Shrinking Docket. Its paltry output of 75 opinions makes an appointment to the Supreme Court look like a prestigious form of early retirement...

Respondent's Exhibit 22, page 8
Voters okay 6 subcircuit candidates who skipped or fared poorly in bar ratings
Chicago Daily Law Bulletin March 20, 1996

CCL (Chicago Council of Lawyers) President C. Steven Tomashefsky struggled to find a voting pattern among the subcircuit election returns Wednesday morning. He likened the voting process in the subcircuits to throwing darts.

...

Tomashefsky, who also favors merit selection of judges, said the election of a candidate as inexperienced as Hopkins made him very disappointed."

"I've got to assume she did something in her community that attracted attention to her," he said. "With subcircuits, it's often something other than your legal ability that gets you recognition."

...

Respondent's Exhibit 22, page 1
Chicago Daily Law Bulletin November 1995
Voters and justices bypass subcircuit talent

...

"When high-caliber judges are elected, it's by accident, says C. Steven Tomashefsky, the Chicago Council of Lawyers president and Jenner and Block partner.

Lawyers council renews call for basing judicial appointments on merit system

Chicago Daily Law Bulletin August 3, 1998

Letter to the editor

To the editor:

Eight weeks ago, the Illinois Supreme Court appointed former state representative Judy Koehler as a justice of the 3d District Appellate Court which sits in Peoria. Ms. Koehler f inished law school less than six years ago and, according to press reports, her work experience since then has been limited to lower-level county and state jobs and as legislative counsel to a lobbyist.

The appointment of Ms. Koehler as an appellate justice was, in reality, the decision of one member of the Supreme Court -- Justice James D. Heiple. Even though the legal power to make such appointments rests with all seven members of the high court, the unwritten tradition is that vacancies in the Appellate Court (and, for that matter, in the trial courts) are filled at the sole discretion of the Supreme Court justice who hails from the district where the vacancies occur and the other six justices simply defer to the hometown choice.

Although this one-person appointive system has sometimes produced outstanding justices, too often Supreme Court justices have used their appointive power as little more than old-fashioned political patronage, with no consideration of finding the best-qualified person.

The Chicago Council of Lawyers has long urged that the Supreme Court's appointive process be exercised on a merit basis. in 1987, the council petitioned the court to establish a public nomination

process for vacancies that would engage citizens, both lawyers and nonlawyers, to help select the best candidates for the bench, based on experience and qualifications, instead of limiting input to a handful of political insiders. Such a process could be adopted without a constitutional amendment or new legislation, yet the court has so far declined to do so.

The failure of the Supreme Court to submit its appointive process to public scrutiny is regrettable. It bespeaks an intention to continue to use the appointive power politically and to continue to ignore the public's right to a merit selection process. This practice virtually ensures that future appointments will pass over the best-qualified lawyers for judicial vacancies.

Kathleen L. Roach
President, Chicago Council of Lawyers

Chicago Daily Law Bulletin March 24, 1999

...

The Supreme Court also suspended the following attorneys for the following periods of time:

...

Roberto Cisneros Jr. of Chicago, (suspended) three years effective the date of his interim suspension last September. Cisneros was convicted of three counts of aggravated sexual abuse. The victim was a 15-year-old girl. M.R. 15558.

Federal Rule of Civil Procedure 11

Rule 11. Signing of Pleadings, Motions, and Other Papers; Representations to Court; Sanctions

(a) Signature. Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of attorney or party.

(b) Representations to Court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,--

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after

a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) How Initiated.

(A) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) On Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b)

and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) Nature of Sanction; Limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) Order. When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed. .

(d) Inapplicability to Discovery.Subdivisions (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 26 through 37.

Attorney Registration and Disciplinary Rule 53

Duty of Attorneys. The Administrator may request the respondent, or any other attorney who may have knowledge of pertinent facts, to provide information in writing, concerning the matter under investigation. Such requests by the Administrator may be made by letter. It shall be the duty of every attorney admitted to practice in this state to respond within 14 days to any request from the Administrator.

Attorney Registration & Disciplinary Rule 284

(a) Post-Trial Motions. Except as provided herein, post-trial motions shall not be filed with or considered by the Hearing Board. A matter which might otherwise be presented by post-trial motion may be the subject of an exception filed with the Review Board. Motions for an extension of time within which to file exceptions to the report of the Hearing Board shall be ruled upon by the chair of the hearing panel which prepared the report.

(b) Closing Argument. ...

735 ILCS 5/2-1001 Substitution of judge

(a) A substitution of judge in any civil action may be had in the following situations:

(1) Involvement of judge. When the judge is a party or interested in the action, or his or her testimony is material to either of the parties to the action, or he or she is related to or has been counsel for any party in regard to the matter in controversy. In any such situation a substitution of judge may be awarded by the court with or without the application of either party.

(2) Substitution as of right. When a party timely exercises his or her right to a substitution without cause as provided in this paragraph (2).

(i) Each party shall be entitled to one substitution of judge without cause as a matter of right.

(ii) An application for substitution of judge as of right shall be made by motion and shall be granted if it is presented before trial or hearing begins and before the judge to whom it is presented has ruled on any substantial issue in the case, or if it is presented by consent of the parties.

(iii) If any party has not entered an appearance in the case and has not been found in default, rulings in the case by the judge on any substantial issue before the party's appearance shall not be grounds for denying an otherwise timely application for substitution of judge as of right by the party.

(3) Substitution for cause. When cause exists.

(i) Each party shall be entitled to a substitution or substitutions of judge for cause.

(ii) Every application for substitution of judge for cause shall be made by petition, setting forth the specific cause for substitution and praying a substitution of judge. The petition shall be verified by the affidavit of the applicant.

(iii) Upon the filing of a petition for substitution of judge for cause, a hearing to determine whether the cause exists shall be conducted as soon as possible by a judge other than the judge named in the petition.

(4) Substitution in contempt proceedings. When any defendant in a proceeding for contempt arising from an attack upon the character or conduct of a judge occurring otherwise than in open court, and

the proceeding is pending before the judge whose character or conduct was impugned, fears that he or she will not receive a fair and impartial trial before that judge. In any such situation the application shall be by petition, verified by the applicant, and shall be filed before the trial of the contempt proceeding.

(b) An application for substitution of judge may be made to the court in which the case is pending, reasonable notice of the application having been given to the adverse party or his or her attorney.

(c) When a substitution of judge is granted, the case may be assigned to some other judge in the same county, or in some other convenient county, to which there is no valid objection. If the case is assigned to a judge in some other county, the provisions of subsections (f) through (m) of Section 2-1001.5 [735 ILCS 5/2-1001.5] shall apply.

Illinois Supreme Court Rule 63

Canon 3. A Judge Should Perform the Duties of Judicial Office Impartially and Diligently.

The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

(1) A judge should be faithful to the law and maintain professional competence in it. A judge should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should maintain order and decorum in proceedings before the judge.

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control.

(4) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

(a) Where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provisions promptly to notify all other partiesof the substance of the ex parte communication and allows an opportunity to respond.

(b) A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

(c) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

(d) A judge may initiate or consider any ex parte communications when expressly authorized by law to do so.

(5) A judge shall devote full time to his or her judicial duties and should dispose promptly of the business of the court.

(6) A judge should abstain from public comment about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to the judge's direction and control. This paragraph does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

(7) Proceedings in court should be conducted with fitting dignity, decorum, and without distraction. The taking of photographs in the courtroom during sessions of the court or recesses between proceedings, and the broadcasting or televising of court proceedings is permitted only to the extent authorized by order of the supreme court.

(8) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, or national origin, and shall not permit staff, court

officials and others subject to the judge's direction and control to do so.

(9) Proceedings before a judge shall be conducted without any manifestation, by words or conduct, of prejudice based upon race, sex, religion, or national origin, by parties, jurors, witnesses, counsel, or others. This section does not preclude legitimate advocacy when these or similar factors are issues in the proceedings.

B. Administrative Responsibilities.

(1) A judge should diligently discharge the judge's administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge.

(3) A judge having knowledge of a violation of these canons on the part of a judge or a violation of Rule 8.4 of the Rules of Professional Conduct on the part of a lawyer shall take or initiate appropriate disciplinary measures.

(4) A judge should not make unnecessary appointments. A judge should exercise the power of appointment on the basis of merit, avoiding nepotism andfavoritism. A judge should not approve compensation of appointees beyond the fair value of services rendered.

(5) A judge should refrain from casting a vote for the appointment or reappointment to the office of associate judge, of the judge's spouse or of any

person known by the judge to be within the third degree of relationship to the judge or the judge's spouse (or the spouse of such a person).

C. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;

(c) the judge was, within the preceding three years, associated in the private practice of law with any law firm or lawyer currently representing any party in the controversy (provided that referral of cases when no monetary interest was retained shall not be deemed an association within the meaning of this subparagraph) or, for a period of seven years following the last date on which the judge represented any party to the controversy while the judge was an attorney engaged in the private practice of law;

(d) the judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of

the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding, or has any other more than de minimis interest that could be substantially affected by the proceeding; or

(e) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known by the judge to have a more than de minimis interest that could be substantially affected by the proceeding; or

(iv) is to the judge's knowledge likely to be a material witness in the proceeding.

(2) A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse and minor children residing in the judge's household.

D. Remittal of Disqualification.

A judge disqualified by the terms of Section 3C may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to

participate, the judge may participate in the proceeding. This agreement shall be incorporated in the record of the proceeding.

28 USCS @ 455

Disqualification of justice, judge, or magistrate

(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding,

or any other interest that could be substantially affected by the outcome of the proceeding;

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Is acting as a lawyer in the proceeding;

(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) Is to the judge's knowledge likely to be a material witness in the proceeding.

(c) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(d) For the purposes of this section the following words or phrases shall have the meaning indicated:

(1) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation;

(2) the degree of relationship is calculated according to the civil law system;

(3) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(4) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:

(i) Ownership in a mutual or common investment fund that holds securities is not a "financial interest"

in such securities unless the judge participates in the management of the fund;

(ii) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) Ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

(e) No justice, judge, or magistrate shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

(f) Notwithstanding the preceding provisions of this section, if any justice, judge, magistrate, or bankruptcy judge to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the matter, because of the appearance or discovery, after the matter was assigned to him or her, that he or she individually or as a fiduciary, or his or her spouse or minor child residing in his or her household, has a financial interest in a party (other than an interest

that could be substantially affected by the outcome), disqualification is not required if the justice, judge, magistrate, bankruptcy judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.